

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN YOUNG,

Petitioner,
v.

CASE NO. 05-CV-71480-DT
HONORABLE GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

JERI-ANN SHERRY,

Respondent,
_____ /

OPINION AND ORDER DENYING THE
MOTION FOR A CERTIFICATE OF APPEALABILITY

On November 21, 2006, this Court issued an opinion and order denying petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254. This Court also denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*. *Young v. Sherry*, No. 2006 WL 3386609 (E.D.Mich. November 21, 2006). On December 28, 2006, petitioner filed a notice of appeal. Petitioner has now filed a motion for certificate of appealability, which the Court construes as a motion for reconsideration of its prior opinion and order. For the reasons stated below, the motion for a certificate of appealability is **DENIED**.

Because this Court previously denied petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court will construe petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability in this case. See

e.g. *Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006); *cert. den. sub nom Jackson v. McDonough*, 127 S. Ct. 240 (2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and show that correcting the defect will lead to a different disposition of the case. *See DirecTV, Inc. v. Karpinsky*, 274 F. Supp. 2d 918, 921 (E.D. Mich. 2003).

Other than conclusory or unsupported allegations, petitioner has failed to advance any arguments in his request for a certificate of appealability which shows that this Court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. A habeas petitioner's conclusory assertion that jurists of reason would find his or her claims to be debatable is insufficient to warrant the issuance of a certificate of appealability. *See Babgy v. Saffle*, 53 Fed. Appx. 25, 28 (10th Cir. 2002). Petitioner's request for reconsideration will therefore be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's application for

writ of habeas corpus and denied him a certificate of appealability. *See Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

ORDER

IT IS ORDERED that the Motion for Certificate of Appealability [Court Dkt Entry # 40] is DENIED.

Dated: January 31, 2007

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 31, 2007, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk